

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

GLORIA J. GAGNON,

Plaintiff,

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v.

NO. CIV-99-653 DJS/WD ACE

RESOURCE TECHNOLOGY, INC.,

a domestic corporation.

Defendant.

**JOINT PROPOSED FINDINGS OF FACT AND
CONCLUSIONS OF LAW**

JOINT FINDINGS OF FACT:

1. Plaintiff is a citizen of the United States and a resident of the County of Bernalillo State of New Mexico.
2. Defendant is a privately-owned, domestic corporation organized under the laws of the State of New Mexico, and its principal place of business is located in the County of Bernalillo, State of New Mexico.
3. At all times herein set forth, Defendant was an "employer" within the definition of the FLSA, 29 U.S.C. § 203, and Plaintiff was at all times herein set forth an "employee" within the definition of the section.
4. At all times herein set forth, the Defendant was engaged in commerce within the meaning of the FLSA, 29 U.S.C. § 203.
5. Defendant has approximately twelve (12) employees.
6. The nature of Defendant's business is consulting and engineering, and it furnishes services to the Federal Government pursuant to services contracts.
7. Plaintiff was employed by the Defendant from May 1991 until March 19, 1999.

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8. During the course of her employment with Defendant, Plaintiff engaged in the operation of one or more businesses of her own.
9. Defendant requested that Plaintiff cease using Defendant's company phones to conduct business unrelated to Defendant's business.
10. Plaintiff conducted business unrelated to Defendant's business, with persons not employed by Defendant, during regular business hours and on Defendant's premises.
11. During her employment with the Defendant, Plaintiff received bonuses in addition to her salary.
12. On March 19, 1999 Defendant terminated Plaintiff's employment.
13. Plaintiff's duties involved bookkeeping, keeping benefits and personnel records, time keeping and working with project managers.
14. Plaintiff was employed by Defendant pursuant to a written employee manual which was published to Plaintiff and other employees by Defendant.
15. Plaintiff approached Defendant's President and co-owner, Elvidio Diniz, with overtime compensation concerns.
16. At Defendant's staff meetings, Plaintiff expressed overtime compensation concerns.
17. Defendant's employee manual provided for a ninety (90) day probationary period during which employees could be terminated without cause, and provided for formal evaluation, progressive discipline and for-cause-termination following successful completion of the probationary period.
18. Plaintiff filed a complaint against Defendant with the United States Department of Labor concerning unpaid overtime wages on March 24, 1999.
19. The Department of Labor determined that RTI had failed to pay Plaintiff overtime compensation as required under the Fair Labor Standards.


20. Plaintiff did not enter into any services contracts with Defendant's client on behalf of RIL.
21. If Plaintiff worked over forty (40) hours in any week, then Defendant did not pay her one and one-half times her regular rate of compensation for those overtime hours.

CONCLUSIONS OF LAW:

1. Defendant was an "employer" within the definition of the FLSA, 29 U.S.C. § 203, and Plaintiff was at all times herein set forth an "employee" within the definition of the section.
2. Defendant was engaged in commerce within the meaning of the FLSA, 29 U.S.C. § 203.
3. The Court possesses subject matter jurisdiction over this matter.
4. The Court possesses personal jurisdiction over the parties.
5. Venue in this case is proper.
6. The proper parties are before the Court.

Respectfully Submitted,

KENNEDY, MOULTON & WELLS, P.C.


Deborah D. Wells
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--and--

telephonically approved 7/20/00
K. Lee Peifer, Esq.
Justin Lesky, Esq.
108 Wellesley Drive S.E.
Albuquerque, NM 87106
(505) 266-4335

I HEREBY CERTIFY that the
original of the foregoing
pleading was faxed to:

K. Lee Peifer, Esq.
Justin Lesky, Esq.
108 Wellesley Drive S.E.
Albuquerque, NM 87106
(505) 266-4335

on this 20th day of July, 2000.

Wendy L. Strath *js*
Deborah D. Wells